

MINUTES OF THE MEETING  
TAXATION COMMITTEE  
MONTANA STATE SENATE

April 17, 1985  
(Second Meeting)

The seventy-fifth meeting of the Senate Taxation Committee was called to order by Chairman Thomas E. Towe at 5:15 pm in Room 413-415 of the Capitol Building.

ROLL CALL: All members of the committee were present.

CONSIDERATION OF HB 607: Senator Halligan was recognized and said that the Yellowtail amendment needed to be offered and considered. He said that this amendment allows the coal contracts to be reviewed by the public and that the public needs to be considered in the process.

MOTION: Senator Halligan moved that HB 607 be amended per the Yellowtail amendments offered at the original hearing on the bill. (see minutes of April 11, 1985).

Senator Neuman spoke against the motion saying that the Coal Tax Oversight Committee would be able to review this material and that it was not legitimate to ask the companies to make this information public.

Senator Eck said that the information relating to the freight rates and railroads was critical and should be available.

Senator Goodover asked if these amendments had been offered in the House. Senator Towe said they were offered on the floor.

MOTION: Senator Goodover moved as a substitute motion that HB 607 be concurred in.

Senator Halligan said that the ramifications and complexities were too great without amendment to the bill. He said the committee should at least discuss them.

Senator Goodover suggested that the amendments be offered on the floor and discussed there. Senator Hirsch agreed saying that the amendments could be discussed there.

Senator Lybeck provided the committee with a copy of an article from the Western Business News (Exhibit 1) saying that lower coal tax is not a panacea.

Senator Neuman asked Senator Towe if he would accept the committee vote on the amendments if it were done now. Senator Towe asked Senator Neuman if he would accept the vote without challenging it on the floor.

Senator McCallum said that no amendments should be made to the bill.

Senator Neuman agreed that amendments should be considered at this time. Senator Goodover withdrew the motion to concur in the bill.

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Senator Towe asked Senator Halligan for clarification of the Yellow-tail amendment. Senator Halligan closed.

Question was called. Senators Brown, Eck, Halligan, Lybeck and Towe voted yes. Senators Goodover, Hager, Hirsch, Mazurek, McCallum, Neuman and Severson voted no. The motion failed.

MOTION: Senator Eck moved that HB 607 be amended per Exhibit 2.

Senator Towe said that a technical correction was necessary and that amendment number 1 should be stricken. He said that would clarify that it would apply only to new agreements. He presented the committee with Exhibit 3 which shows the coal figures and he concluded that unless Wyoming comes down in its profit margin, Wyoming coal would not be competitive with Montana coal. He said that per these amendments the credit would not go on unless it was needed to secure the contract. He said that appropriate confidentiality is insured. The exhibit also shows how the process would work. Senator Towe distributed Exhibit 4 to the committee which demonstrates how it is possible to circumvent this bill and pay 20 percent even on the current coal contracts.

Senator Eck said that with the Driscoll amendments at least the information would be available to the Department.

Senator Hirsch asked the committee to remember the sunset provision in the bill. He said that if the credit works the companies will want to come in to convince and inform the Legislature. He said there is no need for amendment and complexity and that the committee must trust the judgement of Terry Cohea.

Senator Eck said that Ms. Cohea's concerns have been addressed by the amendment.

In response to a question from Senator Towe, Ms. Terry Cohea, Executive Assistant to Governor Ted Schwinden, said that the amendment still puts the winning bidder in a position of being unable to claim the credit without getting information from the losing bidder. She said the contract itself is not a neat package, but a complex set of decisions. She said there are many factors involved besides the final agreement.

Senator Towe said that the information would not have to come from the losing bidder. He said that the operator already has access to the necessary information and that the operator and purchaser could jointly apply. He said no company would rest a \$100 million decision on a condition not acceptable to the purchaser.

Senator Neuman said it would put the operator in the situation of peddling bids and destroy the bidding process. He said that the comparison between Montana and Wyoming provided by Senator Towe is not accurate because of milage and transportation problems.

Senator Towe said the figures came from Mr. Hertog in Western Energy Company. He said the milage would be between 240 and 280 miles, but

the 280 figure was generally used in the industry.

Senator Towe concluded that without the amendment no one can be sure what the credit will do or how it will function.

Senator Eck closed on her motion to amend HB 607.

Question was called. Senators Brown, Eck, Halligan, Lybeck and Towe voted yes. Senators Goodover, Hager, Hirsch, Mazurek, McCallum, Neuman and Severson voted no. The motion failed.

MOTION: Senator Neuman moved that HB 607 be concurred in.

Senator Towe said his fear was that the window of opportunity was now permanently open and that the reduction of the coal tax would be permanent.

Senator Neuman said that the amendments were not necessary and that they had received much discussion. He said that the problems are not that serious and that amendment would harm the bill.

Senator Hirsch noted the nonserverability clause in the bill, and said that income tax sections of the code are handled in the same way.

Senator Brown said he wanted all to understand that defeat of the amendments means that there is no chance to prove that the bill is effective. He said if this bill passes the Legislature should face the fact that the coal tax is permanently reduced. "Our constituents will make up the difference," he concluded.

Senator Towe said that the loss to the state would be about \$750 million over a 20-year period.

Senator Hirsch disagreed saying that the window was open for only two years. He said that the Governor can close the window with the stroke of a pen. He said that the Governor has made good political judgments in the past and should be trusted now.

Senator Eck said that the Governor, however, has not made a promise to veto a permanent decrease in the severance tax. She said that she felt it was a tax break and not an incentive as "anything we do will not bring new coal contracts."

Senator Goodover said that the experts say there will be no market for coal in 20 years anyway.

Senator Neuman closed on his motion. The world has changed, he said. The market for coal has changed with it. He said that state contracts are only one factor, but that a few cents on a ton of coal can make a difference and that this bill would help.

Senator Towe said that Governor Herschler of Wyoming had asked his Legislature to extend the reduction. He said that had not been adopted there because of the action's of Montana's Governor.

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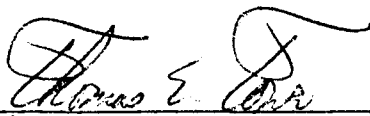
He noted to the committee that the Senate had this day debated a bill to take people off welfare and that now the Senate Taxation Committee would vote to give tax relief to coal companies.

Senator McCallum said that it was giving a break to people who needed the jobs.

Senator Neuman again closed, this time without comment.

Question was called. Senators Brown, Eck, Halligan, Lybeck and Towe voted no. Senators Goodover, Hager, Hirsch, Mazurek, McCallum, Neuman and Severson voted yes. The motion carried.

Chairman Towe adjourned the meeting at 6:15 pm.

  
\_\_\_\_\_  
Chairman

# ROLL CALL VOTE

## SENATE TAXATION COMMITTEE 49 th Legislative Session -- 1985

Time \_\_\_\_\_ Date April 17, 1985 Room 413-415

Motion: that HB607 be Newman

Name	Yes	No	Excused
Senator Brown		✓	
Senator Eck		✓	
Senator Goodover	✓		
Senator Hager	✓		
Senator Halligan		✓	
Senator Hirsch	✓		
Senator Lybeck		✓	
Senator Mazurek	✓		
Senator McCallum	✓		
Senator Neuman	✓		
Senator Severson	✓		
Senator Towe		✓	

# STANDING COMMITTEE REPORT

April 17, 1985

MR. PRESIDENT

We, your committee on Taxation

having had under consideration House Bill No. 507

third reading copy ( blue )  
color

(Senator Neuman)

**PRODUCTION INCENTIVE TAX CREDIT TO COAL SEVERANCE TAX.**

Respectfully report as follows: That House Bill No. 507

BE CONCURRED IN

~~XXXXXX~~  
DO PASS

~~XXXXXXXXXX~~  
DO NOT PASS

Senator Thomas E. Towe, Chairman.

# ROLL CALL VOTE

## SENATE TAXATION COMMITTEE 49 th Legislative Session -- 1985

Time 5:50 pm Date April 17, 1985 Room 413-415

Motion: that HB 607 be amended per  
yellowtail amendments Halligan

Name	Yes	No	Excused
Senator Brown	✓		
Senator Eck	✓		
Senator Goodover		✓	
Senator Hager		✓	
Senator Halligan	✓		
Senator Hirsch		✓	
Senator Lybeck	✓		
Senator Mazurek		✓	
Senator McCallum		✓	
Senator Neuman		✓	
Senator Severson		✓	
Senator Towe	✓		

Amend HB 607, 3rd Reading (Blue) Copy

1. Page 5, line 23.

Following: "(1)"

Strike: "A"

Insert: "Subject to the provisions of subsection (4), a"

2. Page 6, line 3.

Following: "(2)"

Strike: "A"

Insert: "Subject to the provisions of subsection (4), a"

3. Page 6.

Following: line 15

Insert: "(4) The credit allowed in subsection (2)(b) is available to a coal mine operator only upon joint application to the department by the coal mine operator and a qualified purchaser. The department may not grant the credit applied for unless the applicants establish that, but for the credit, the contract would not have been awarded to the applicant coal mine operator. Evidence that a competing coal mine operator submitted a bid to the purchaser that, but for the credit, would be lower than the applicant coal mine operator's contract price with the qualified purchaser figured on the price per million BTUs delivered to the qualified purchaser's plant is conclusive and binding on the department. The application shall be made in the same manner as a petition for a ruling provided in Section 4(4). Such a ruling may be limited to whether or not the applicants are eligible for the credit under this subsection, leaving the qualifications under other provisions for later determination.

4. Page 10, line 18.

Following: "Section 5(1)(B) "

Insert: "and Section 3(4) "

--A coal mine operator could reorganize under a corporate reorganization -- spin off a subsidiary -- and have the subsidiary enter into a new contract that qualifies for the credit with a subsidiary of the utility company. As soon as the new contract is signed, they terminate the old contract and the credit applies to the whole amount.

- 5) The problems in #3 and #4 above could be avoided by a certification process as proposed by the coal companies or by granting discretion to the Dept. of Revenue as proposed by the Driscoll Amendments.
- 6) The bill actually acts as a disincentive for long term contracts. As Mike Gustafson of WESCO Resources (Montco) pointed out in the Billings Gazette Sunday, a purchasing utility company must renew its existing contracts with Montana producers when they come due or they will lose the credit. Because of this they will likely only contract until 1993 or 1995 when their existing contracts come up for renewal rather than the customary 20 years. This way the utilities will preserve more flexibility.
- 7) The coal companies have generally washed their hands of the project and no longer support the bill.

--In fact, many are opposed to it because there is no chance for them to "put up" and they will lose their chance to work on lowering the tax in the future.

- 8) It is nearly special interest legislation. Only one company, NSP, is likely to benefit and they already have their bids in. Only 2 producers, Western Energy and Westmoreland are genuine bidders. The bill was written primarily by Western Energy.

# ROLL CALL VOTE

## SENATE TAXATION COMMITTEE 49 th Legislative Session -- 1985

Time \_\_\_\_\_ Date April 17, 1985 Room 413-415

Motion: that HB601 be amended per  
Exhibit 2. Eck

Name	Yes	No	Excused
Senator Brown	✓		
Senator Eck	✓		
Senator Goodover		✓	
Senator Hager		✓	
Senator Halligan	✓		
Senator Hirsch		✓	
Senator Lybeck	✓		
Senator Mazurek		✓	
Senator McCallum		✓	
Senator Neuman		✓	
Senator Severson		✓	
Senator Towe	✓		

DRISCOLL AMENDMENT  
How It Works

Utility customers deal only in sealed bids.

Company A (Mont. Coal Mining Co.) bids	\$8.50 per ton
less 1/3 of coal tax, if necessary	
Company B (Mont. Coal Mining Co.) bids	8.00 per ton
less 1/3 of coal tax, if necessary	
Company C (Wyo. Coal Mining Co.) bids	5.00 per ton

Utility reduces each bid to ¢ per million btu's delivered

Co. A = 123.23¢ per million btu's  
Co. B = 120.10¢ per million btu's  
Co. C = 126.43¢ per million btu's

Co. B gets the contract - no need to figure the tax credit.

But if Co. C bid \$4.00 and the other bids were the same:

Co. A = 123.23¢ per million btu's  
Co. B = 120.10¢ per million btu's  
Co. C = 120.69¢ per million btu's

We must figure the tax.

Co. A = \$1.83 per ton tax (30%) or 10.52¢ per million btu's

Therefore their bid would be 112.71¢ per million btu's and they would be lower than Co. C.

Co. B = \$1.72 per ton tax or 9.88¢ per million btu's  
Therefore their bid would be 110.22¢ per million btu's and they would be lower still

Co. C = remains at 120.69¢ per million btu's

Co. B is awarded the contract. Utility and Co. B apply to Department of Revenue for credit. They need only show Co. C's bid to get the credit.

**TECHNICAL FLAWS IN HB 607**

- 1) Section 3 limitations are not used in the calculation of the credit under Section 4.

--Section 3 is window dressing only -- no effect on the credit.

--Section 4 is the operative section -- how to calculate the credit.

--Example -- an existing agreement extended for 4 years would produce "incremental production" for all 4 years and all would qualify.

--In effect, the window is permanently open. The June 30, 1987 termination date is in Section 3 and will not be taken into effect in the calculation.

- 2) The language does not contemplate a new mine operator or a new purchaser.

--If a mine operator is new (such as Montco) and had no production in 1983 and 1984, he cannot have a "base production level." You could imply his base production level was zero, but a court might rule that the legislature clearly intended to exclude a new mine operator.

--The same applies to a new purchaser (who has not purchased Montana coal before). He would have no base consumption level.

- 3) The limitations could be avoided by forming a partnership. (Assuming #1 and #2 above were corrected).

--Example -- NSP and Minnesota Light and Power could build a new plant together as partners, and include an old NSP plant (or several plants) into the partnership. NSP could let Minnesota Light and Power buy all the coal -- they would qualify for the credit -- and NSP could terminate its existing contracts. As a result, all the coal under existing NSP contract would receive the credit.

- 4) The limitations could be avoided by forming subsidiaries.

ROLL CALL

SENATE TAXATION COMMITTEE

49th Legislative Session -- 1985

Date April 17, 1985 *second meeting*

Location -- Room 413-415

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Name Present Absent Excused

Senator Brown	✓		
Senator Eck	✓		
Senator Goodover	✓		
Senator Hager	✓		
Senator Halligan	✓		
Senator Hirsch	✓		
Senator Lybeck	✓		
Senator Mazurek	✓		
Senator McCallum	✓		
Senator Neuman	✓		
Senator Severson	✓		
Senator Towe	✓		



# Tiers rejected, Wyoming tax system is in a sad state

By SAMUEL WESTERN

## WESTERN BUSINESS TRENDS

**CHEYENNE** — The 1985 Wyoming Legislature is going to regret not doing something about the state's property-tax system.

**F**OR THE 48th time in a row, the Legislature failed to replace a tax system laced with inequalities that befuddle residents.

Half the blame this time can be put on the House Revenue Committee. While the Senate accepted a proposal by Sen. Robert Frisby, R-Cody, to install a system of tax tiers, the Revenue Committee trounced the idea 9-1, never clearing the bill for debate.

The Senate isn't totally off the hook. The chamber rejected a bill Sen. Frisby considered even more important than the tier-system legislation: amending the constitution.

Many legislators felt the tier system ran afoul of Article 1, Section 28 of the Wyoming Constitution because under such a law, a home in Wyoming should be taxed at the same rate as minerals, at 100 percent of fair market value.

At least two members of the House Revenue Committee said they would have treated the idea of a tier system differently if the Senate had agreed to strike the "equal and uniform" language from the constitution.

*Sam Western is a free-lance writer living in Casper.*

Sen. Frisby, 15 years a county assessor before coming to the Legislature, has sat on the Senate Revenue Committee every year he's gone to Cheyenne. The veteran Park County lawmaker insists the tier system is the only alternative.

A primary option is to tax all property, except minerals and agriculture, at an equal percentage — and specify those rates in the constitution: Let's treat everyone the same.

This is where politics enters the arena.

An increase in homeowner taxes is politically unacceptable, so if taxes are raised and assessed uniformly, the Legislature will turn around and grant a homeowners' exemption.

That is nothing more than a clumsy way of setting a tier.

The across-the-board method, with minerals and agriculture excluded, was tried by the State Board of Equalization recently and didn't work so well.

The Legislature has again shirked a responsibility that is clearly theirs.

The constitution says: "The Legislature shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal."

By September of next year, the state will have a new appraisal of all homes in the state and, under current regulations, the Board of Equalization will be responsible for setting the assess-

ments on personal homes.

Unless there is some radical upswing in the price of oil, Wyoming will probably experience a revenue shortfall in the next three or four years.

When that happens, there will be tremendous pressure to raise taxes, and if there is no base which to work — such as a tier system — things are going to get hot in Cheyenne.

The crucial question is whether it will get so hot that homeowners will start contributing to state coffers.

Revenue from property tax goes to counties, cities and towns, none goes into the state general fund. Compared to other states, Wyoming is 48th in terms of property-tax impact on homeowners. Homes are taxed at an average of 6 percent of fair market value.

An interim study group, led by tax whiz Rep. Ron Micheli, R-Fort Bridger, is planning to study the tax systems in other states.

Some feel the interim study group will end up recommending a tier system.

**A**SSUME THE worst: By 1986 the Wyoming homeowner is going to be seen as a source of revenue. If a tier system isn't installed by then, taxpayers may show delegates that they can give new meaning to the word "disgruntled." WB